IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6234 of 2007()

CRIME NO. 103/07 OF KODANCHERY POLICE STATION, KOZHIKODE

PETITIONERS/ACCUSED

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1. NAZAR,S/O. BEERAN,579 LAKSHAM HOUSE,
   POST VELIMANNA, RAROTH AMSOM,VELIVANNA DESOM,
   THAMARASSERY.

2. KAMURUDHEENS/O. MUHAMMED,
   VETTYVANPALIL HOUSE,KOODATHI AMSOM DESOM,
   KUDATHI BAZAR P.O.,KODANCHERY.

3. IBRAHIM BADSHA,S/O. UMMER,579
   LAKSHAM HOUSE, POST VELIMANNA,
   RAROTH AMSOM,VELIVANNA DESOM,
   THAMARASSERY.

4. HAMEED,S/O.KUNHAYIN, 579
   LAKSHAM HOUSE, POST VELIMANNA,
   RAROTH AMSOM,VELIVANNA DESOM,
   THAMARASSERY.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. SUB INSPECTOR OF POLICE
   KODANCHERY POLICE STATION
   KOZHIKODE.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6234 of 2007

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Dated this the 22nd day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 4 in a crime registered for offences, inter alia, under Sections 332 and 308 I.P.C. The crux of the allegations against the petitioners is that the victims, who were Revenue officials, engaged in the activity of prevention/detection of crimes under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, were attacked and deterred from performing the official duties by the accused persons (six in number). A lorry, in which two persons were present, was allegedly being used for commission of the offence under the Act. The officials intercepted the vehicle. At that time, four persons, who came in two motor cycles to the place where the lorry was intercepted, along with the two in the lorry, unleashed an attack on the officials. One of the victims suffered injuries when blow with the jacky lever of the lorry, which was attempted to be warded off, fell on his forehead. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that in any view of the matter allegation of the offence under Section 308 I.P.C. is not justified, considering the nature of the injuries and the nature of allegations.

3. The learned Prosecutor fairly accepts that on the allegations raised and on the basis of the materials presently available, allegation under Section 308 I.P.C. would not lie. However, offence under Section 332 I.P.C. is certainly made out. In these circumstances anticipatory bail may not be granted to the petitioners.

4. The learned counsel for the petitioners submits that in view of the malicious inclusion of Section 308 I.P.C. in the F.I.R. the petitioners may not be granted regular bail, as Section 308 I.P.C. is an offence triable exclusively by a Court of Sessions.

4. Having considered all the relevant inputs, I am not persuaded to agree that this is a fit case where directions under Section 438 Cr.P.C. can or ought to be issued. However, I find merit in the submission of the learned Prosecutor that appropriate direction regarding consideration of application for grant of regular bail can be issued as agreed by the counsel.

5. I find merit in the submissions of the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the

extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously. While considering such application, the learned Magistrate can eschew the allegation under Section 308 I.P.C. and consider the application for bail, as if no allegation under Section 308 I.P.C. is raised at all.

(R. BASANT)
Judge

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